



Paper No. 10

SUGHRUE, MION, ZINN, MACPEAK & SEAS, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, DC 20037

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APR 1 8 2003

OFFICE OF PETITIONS

In re Application of
Brogne, et al.
Application No. 09/758,245
Filed: January 12, 2001
Attorney Docket No. Q62281

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ON PETITION

This is a decision on the petition under 37 C.F.R. §1.181, filed October 1, 2002, to withdraw the holding of abandonment in the above-identified application.

The petition is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

This application became abandoned for failure to timely reply within two months to the "Decision Refusing Status Under 37 CFR 1.47(a)" mailed September 10, 2001. Accordingly, this application became abandoned on November 11, 2001. A Notice of Abandonment was mailed on September 16, 2002.

Petitioner contends a timely "Response to Decision," along with a request for a five (5) month extension of time, was submitted to the Office of Petitions by facsimile transmission, on April 10, 2002. In support, petitioner has submitted a copy of the "Response to Decision" purportedly filed April 10, 2002, and a copy of the facsimile receipt that indicates the successful facsimile transmission of five (5) pages to 703-308-6916 (the Office of Petitions fax number).

The Patent and Trademark Office (Office) has a well known procedure to ensure timely submission of responses by facsimile transmission. 37 CFR 1.8(a), Certificate of Mailing or Transmission states, in pertinent part:

(a) ...[C]orrespondence required to be filed in the Patent and Trademark Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed...

- (1) Correspondence will be considered as being timely filed if:
- (i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:

...

(B) Transmitted by facsimile to the Patent and Trademark Office in accordance with §1.6(d); and

(ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

Petitioner has not provided any supporting documentation that evidences the timely submission of the "Response to Decision" through the use of a Certificate of Mailing or Transmission under 37 CFR 1.8. If petitioner complied with the requirements of 37 CFR 1.8 in the submission of the "Response to Decision", then petitioner should provide, in any renewed petition petitioner may wish to file, a copy of the "Response to Decision" and any supporting documentation that indicates the necessary compliance with 37 CFR 1.8 (Certificate of Mailing or Transmission) which would allow for the "Response to Decision" to be considered timely submitted.

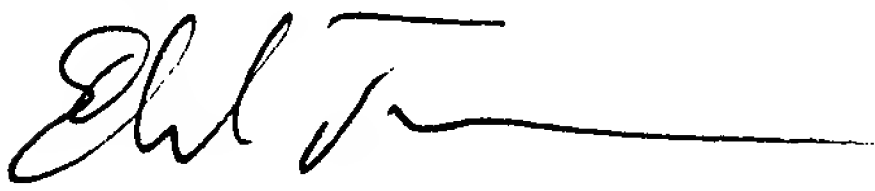
Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA

Telephone inquiries should be directed to the undersigned at (703) 306-9200.



Edward J. Tannouse
Petitions Attorney
Office of Petitions
United States Patent and Trademark Office